



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0204; FRL-9440-01-R3]

Air Plan Approval; Delaware; Revision of Regulation for Sulfur Content of Fuel Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to the reduction of the maximum allowable sulfur content limit for distillate fuels, from a current limit of 3000 parts per million (ppm) (0.3% by weight) to 15 ppm (0.0015% by weight) and residential fuels from a current limit of 1.0% by weight to 0.5% by weight. This revision also adds requirements for sampling and testing along with certification and recordkeeping.

Additionally, start up, shut down and malfunction provisions that were previously included in the Delaware SIP have been removed in this revision. EPA is proposing to determine that such removal corrects a deficiency identified in the June 12, 2015, SIP call issued to Delaware. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2014-0204 at <https://www.regulations.gov>, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is 215-814-2030. Ms. Moser can also be reached via electronic mail at moser.mallory@epa.gov.

SUPPLEMENTARY INFORMATION: On July 10, 2013, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware SIP which comprises revisions to Title 7 of Delaware’s Administrative Code (7 DE Admin. Code) 1108 – Sulfur Dioxide Emissions from Fuel Burning Equipment. The revision to 7 DE Admin. Code 1108 will reduce the amount of sulfur in fuel oils used in fuel burning units.¹ The revised regulation also establishes the date of compliance and adds necessary record keeping and recording provisions to ensure compliance with the regulation. The revision removes start up, shut down and malfunction provisions that were previously included in the Delaware SIP. On August 19, 2016, EPA received a supplemental letter from DNREC withdrawing a portion of Section 3.0 of 7 DE Admin. Code 1108 from the July 10, 2013, SIP submittal subject to EPA’s review. The portion removed from the 2013 submittal is the last sentence of Section 3.0 which states, “In order to employ an emission control rather than sulfur content limits as a means of

¹ A “fuel burning unit” is defined as “each unit, or any combination of units discharging to a common stack used for the burning of fuel or other combustible material for the primary purpose of utilizing the thermal energy released.” This definition is included in the Delaware SIP at 40 CFR 52.420(c).

complying with this Regulation, an owner or operator of fuel burning equipment must demonstrate to the Department in advance that the equivalent emission will be achieved.” This provision will be retained as a State enforceable only requirement.² Delaware’s August 19, 2016, letter is available in the docket for this rulemaking and online at www.regulations.gov.

I. Background

The revision consists of an amendment to the Delaware SIP to reduce the maximum allowable sulfur content limit for distillate and residential fuels. If the SIP revision were approved, the sulfur content limit for distillate fuel would be lowered to 15 ppm by weight. The sulfur content limit for a residential fuel would be lowered to 0.5% by weight. For any other fuel, the sulfur content would remain 1.0% by weight. The combustion of sulfur-containing fuel oil releases sulfur dioxide (SO₂) emissions, which contribute to the formation of regional haze and fine particulate matter (PM_{2.5}), all of which impact the environment and human health. Regional haze impairs visibility through scattering and absorption of light. PM_{2.5} pollution exposure has been linked to a variety of health problems. In addition to improving public health and the environment, decreased emissions of SO₂ will contribute to the attainment or maintenance, or both, of the SO₂ and PM_{2.5} national ambient air quality standards (NAAQS).

In addition, the July 10, 2013, SIP submission partially responds to a SIP call issued by EPA to address startup, shutdown and malfunction (SSM) events which are contrary to the CAA and existing EPA guidance.³ On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized an action (2015 SSM SIP Action) that clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with

² Although this provision remains in the underlying Delaware regulations, because Delaware withdrew this provision from its SIP revision, it is not and will not be incorporated into the Delaware SIP. Consequently, EPA would not recognize any alternate emissions control approved by Delaware pursuant to this provision as a means of complying with the federally approved SIP.

³ After issuing a statement in 2020 to change aspects of the policy articulated in the 2015 SSM SIP Action, EPA in 2021 reinstated and reaffirmed the 2015 policy (*see* September 30, 2021, memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator). Neither the 2020 nor 2021 guidance memoranda affected the SSM SIP call for Delaware, and, as stated in the McCabe memorandum, EPA intends to implement the 2015 SSM SIP Action, including taking this action on the SIP submittal in partial response to the 2015 SIP call.

CAA requirements. In the 2015 SSM SIP Action, EPA also issued a finding that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus issued a “SIP call” for each of the identified SIP provisions. 80 FR 33840. *See also* 78 FR 12460 (February 22, 2013) (proposed finding for SIP call). Delaware was among the 36 states that received a 2015 SIP call. EPA established a due date, November 22, 2016, for states subject to the SIP call to submit corrective SIP revisions.

Several provisions in the Delaware SIP were identified in the 2015 SIP call as substantially inadequate to meet CAA requirements. This included 7 DE Admin. Code 1108, Section 1.2 (Sulfur Dioxide Emissions from Fuel Burning Equipment), which stated that “[t]he provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.” This SIP submission from Delaware that is the subject of this action contains a revised version of 7 DE Admin. Code 1108 to delete the language identified in the 2015 SSM SIP call formerly at Section 1.2. That language provided impermissible exemptions from the low sulfur fuel oil provisions where sources obtained permits from Delaware.

II. Summary of SIP Revision and EPA Analysis

This SIP revision amends 7 DE Admin. Code 1108 sections 1.0 through 3.0 and adds sections 4.0 and 5.0. The amendments to section 1.0 (General provisions) remove language related to the start-up and shutdown of equipment and provide clarity to existing language pertaining to the fact that catalyst regeneration only applies to catalyst regeneration in fluid catalytic cracking operations.

The amendments to section 2.0 (Limit on Sulfur Content of Fuel): (1) remove language related to oil sampling methods and sulfur concentrations of residual and distillate fuels; (2) establish a compliance date of July 1, 2016, such that no person shall offer for sale, sell, deliver,

or purchase any fuel having a sulfur content greater than the applicable limits established within the regulations, when such fuel is intended for use in any fuel burning equipment; (3) lower sulfur content in residual fuel from 1% by weight to 0.5% by weight; (4) lower sulfur content in distillate fuel from 3,000 ppm to 15 ppm; and (5) establish a transitional period through June 30, 2017, for distillate fuel stored, offered for sale, sold, delivered, purchased, and used in Delaware prior to July 1, 2016, having a sulfur content greater than the limits specified within this regulation.⁴

The amendments to section 3.0 (Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation) remove language and add clarifying language related to any fuel burning equipment employing emission controls of SO₂ such that fuel burning equipment with controls achieving equal or better reductions are not subject to fuel sulfur limits.

Section 4.0 (Sampling and Testing Methods and Requirements): (1) establishes sampling and testing requirements for oil samples using standard American Society for Testing and Materials (ASTM) methods ASTM D4057-06; (2) establishes sampling and testing requirements for sulfur concentrations of residual and distillate fuels using the standard ASTM method D2622-10; and (3) allows the use of any alternative method found in 40 Code of Federal Regulations (CFR) 80.580 and/or approved by EPA and DNREC, to provide flexibility.

Section 5.0 (Recordkeeping and Reporting) establishes certification and recordkeeping requirements for any person subjected to limits on sulfur content of fuel, when selling or delivering any fuel oil to be used in Delaware.

In addition, this SIP revision removes section 1.2, which EPA determined in its June 12, 2015, SSM SIP Action to be substantially inadequate to meet CAA requirements and, therefore, SIP called pursuant to CAA section 110(k)(5). The provision was one of several that were identified as inadequate from the Delaware SIP because they impermissibly provide exemptions

⁴ These provisions address the Mid-Atlantic/Northeast Visibility Union (MANE-VU) regional haze strategy. See 79 FR 25506.

from otherwise applicable emissions limitations during periods of startup and shutdown.⁵

This proposed SIP revision to implement low sulfur fuel oil provisions is expected to reduce regional haze and visibility impairment in Delaware. Additionally, decreased emissions of SO₂ will contribute to the attainment, maintenance, or both, of the SO₂ and PM_{2.5} NAAQS in Delaware and the surrounding areas.

III. Proposed Action

Delaware's SIP revision, which incorporate amendments made to 7 DE Admin. Code 1108, will lower the maximum allowable sulfur content limit combusted or sold in Delaware and aid in reducing SO₂ emissions. These emissions are a cause of regional haze and reducing them will help Delaware and the surroundings areas to attain and maintain the SO₂ and PM_{2.5} NAAQS. EPA has determined that this SIP revision meets the requirements of the CAA. Therefore, EPA is proposing to approve the July 10, 2013, SIP revision which sets sulfur limits for combustion and sale in Delaware, as amended by Delaware on August 19, 2016. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

In addition, based on Delaware's removal of the language in section 1.2, which EPA identified in the 2015 SSM SIP Action as an impermissible SSM exemption provision, EPA proposes to find that this SIP revision adequately addresses the specific deficiency that EPA identified in the 2015 SSM SIP Action with respect to section 1.2 of the Delaware SIP. If EPA were to finalize approval of the SIP revision and finalize the finding that this SIP revision adequately addresses the SIP call, the SIP call for section 1.2 of the Delaware SIP would be resolved. The remaining portions of the SIP call issued to Delaware in 2015 would remain in effect pending future EPA action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that

⁵ The Delaware specific portion of the 2015 SIP Call can be found at 80 FR 33960 (June 12, 2015).

includes incorporation by reference of the state rules being approved. In accordance with requirements of 1 CFR 51.5, EPA is thus proposing to incorporate by reference Delaware's Sulfur Dioxide Emissions from Fuel Burning Equipment requirements as described in 7 DE Admin. Code 1108, not including the last sentence of section 3.0, which Delaware withdrew from this SIP revision. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, regarding fuel oil sulfur limits for combustion and sale in the State of Delaware, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Regional Haze, Sulfur oxides.

Dated: January 13, 2022

Diana Esher,
Acting Regional Administrator,
Region III.